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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,250	09/13/2001	John Downing Curry	7315	3328

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THE PROCTER & GAMBLE COMPANY
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EXAMINER

PASCUA, JES F

ART UNIT PAPER NUMBER

3727

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/830,250

Applicant(s)

CURRY ET AL.

Examiner

Jes F. Pascua

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 23-43 is/are pending in the application.
- 4a) Of the above claim(s) 9-15, 27-41 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 and 42 is/are rejected.
- 7) ☒ Claim(s) 8 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/20/04 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4, 6, 24 and 42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Taylor.

As a note, the recitation that flexible wrap container is “for use in a washing machine” has not been given patentable weight because it has been held that a

preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

The function statement "wherein said wrap container is used to hold fabric during laundering in a washing machine" imparts no further structure to applicant's invention, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

4. Claim 20 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wirth.

The recitation that flexible wrap container is "for use in a washing machine" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

The function statement "during laundering in a washing machine" imparts no further structure to applicant's invention, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not

differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

5. Claims 1-5, 24 and 42 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by French et al.

The recitation that flexible wrap container is "for use in a washing machine" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

The function statement "wherein said wrap container is used to hold fabric during laundering in a washing machine" imparts no further structure to applicant's invention, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor or French et al.

Taylor and French et al. each disclose the claimed invention except for the flexible panel being constructed from a material selected from the group consisting of woven polyester, woven nylon or a combination thereof. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use material selected from the group consisting of woven polyester, woven nylon or a combination thereof to construct the flexible panel of Taylor or French et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

8. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geysel.

Geysel discloses the claimed invention except for the strap 10 having a fastening device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the strap of Geysel with a fastening device since it was known in the art that fastening devices on straps facilitate securing the strap about the container.

9. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack et al.

McCormack et al. discloses the claimed invention except for the strap 19 having a fastening device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the strap of Geysel with a fastening device since it was known in the art that fastening devices on straps facilitate securing the strap about the container.

The function statement "wherein said wrap container is used to hold fabric during laundering in a washing machine" imparts no further structure to applicant's invention, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Allowable Subject Matter

10. Claims 8 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed 07/20/04 have been fully considered but they are not persuasive.

In response to applicant's argument that Taylor does not teach or suggest a flexible wrap container which includes at least one and a first fastening device attached to the strap for securing the wrap container in a roll-like shape, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, Taylor discloses straps 20 and first fastening devices 21 attached to straps 20. Having met applicant's claimed structure, the straps and fasteners of Taylor is inherently capable of securing the wrap container in a "roll-like shape" to the same degree as claimed. Furthermore, there is no explicit recitation in applicant's specification that the compact configuration of the Taylor wrap container, as shown by Figs. 1 and 2, is not a "roll-like shape" (emphasis added).

Applicant's argument that Wirth does not teach or suggest a fence comprising a plurality of loops attached to a flexible side panel is opinion. Wirth clearly shows in Fig. 2 a plurality of loops 58 attached along left and right margins 14, 16 of flexible panel 12, which plurality of loops 58 are formed into a plurality of rows. Margins 14, 16 of Wirth meet the structure of applicant's "flexible fence" to the same degree as claimed.

In response to applicant's argument that the Wirth fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the

loops on each fence are formed into a plurality of rows”) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 20 merely recites, “said loops are formed into a plurality of rows”. It cannot be determined, with any degree of certainty, whether “said loops” refer to the loops of one fence or both fences.

Regarding the rejection of the claims 1-5, 24 and 42 as being anticipated by French et al., applicant remarks that the blanket and storage pouch of French et al. are separate components. In response to applicant's argument that French et al. does not suggest applicant's flexible wrap container, a claim is anticipated if each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference, or that the claimed invention was previously known or embodied in a single prior art device or practice. In this case, French et al. discloses each element of applicant's claims. Applicant has failed to specifically point out what elements in the claims are missing from French et al.

Applicant argues that neither Taylor nor French et al. provide the suggestion of making their wrap containers from a material selected from the group consisting of woven polyester, woven nylon, or a combination thereof. Applicant has failed to remark why it would not have been obvious to a person having ordinary skill in the art at the time the invention was made to make the Taylor or French et al. Wrap containers from a material selected from the group consisting of woven polyester, woven nylon, or a combination thereof as actually proposed by the rejection of claims 7 and 25. Applicant

has misread the rejection. The Examiner does not rely on Taylor or French to suggest the claimed materials. The Examiner relies upon the ordinary skill of a person in the same endeavor as Taylor or French to select the known materials woven polyester, woven nylon or a combination of both in order to make the inventions of Taylor or French for whatever purpose is desired.

Regarding applicant's argument that it would not have been obvious to provide the strap of Geysel with a fastening device, the Examiner finds no explicit statement in Geysel that a fastening device is neither provided nor desired on the strap. Absent an explicit statement in Geysel that the strap does not require a fastening device, applicant's argument that Geysel teaches away from the present invention is opinion. Furthermore, Geysel meets the functional recitation, "said wrap container is used to hold fabric during laundering in a washing machine" to the degree that the Geysel wrap holds the fabric for a period of time during laundering before "self-emptying" the fabric into the washing machine.

Regarding applicant's argument that MacCormack et al. does not teach a fastening device, applicant, again, has misread the rejection. The Examiner does not propose that MacCormack et al. teaches it would have been obvious to provide a fastening device. The 10/31/03 Office action proposes that a person having ordinary skill in the same endeavor as MacCormack would have found it obvious to provide the wrap container of MacCormack et al. with a fastening device.

Conclusion

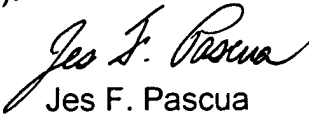
12. This is a continued examination of applicant's earlier Application No. 09/830,250. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP